THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17847 OF 2006

ORAL ORDER:

The petitioner claims to be the owner of the vehicle bearing registration No.AP 20-W 2607. The said vehicle was seized by the Prohibition & Excise Sub-Inspector, Jaggaiahpeta, the 2nd respondent herein, on an allegation that the vehicle was involved in an offence punishable under the provisions of the A.P. Excise Act, 1968. Accordingly, Crime No.257/05-06, on the file of the Prohibition & Excise Station, Jaggaiahpet, Krishna District, was registered. It appears that investigation is still pending. In the meanwhile, the petitioner filed Crl.P.No.2572 of 2006 under Section 482 of Code of Criminal Procedure before this Court with a prayer to call for records relating to Cr.No.257/05-06 and to quash the same. This Court dismissed the said petition; however, the petitioner was granted liberty to approach the Court below and to file an application seeking appropriate relief. The petitioner claims that in pursuance of the order of this Court, he made an application before the Judicial First Class Magistrate, Jaggaiahpet under Section 451 of Cr.P.C. for release of the vehicle in question. The said application was returned on 27.6.2006 by the learned Judicial First Class Magistrate, observing that the petitioner has to move an application before the concerned Excise Official for appropriate relief. Thereafter, the petitioner filed an application dated 12.7.2006 before the Deputy Commissioner of Prohibition and Excise, Vijayawada, Krishna district, requesting to forthwith produce the said vehicle before the Judicial First Class Magistrate, Jaggaiahpet, so as to enable him to move an application for interim custody of the vehicle. Alleging that the 1st respondent-Deputy Commissioner of Prohibition and Excise failed to consider the said representation, this Writ Petition is filed with the following prayer:

> ".. to declare the action of the respondent No.1 herein in not passing any orders on the representation dated 12.7.2006 submitted by the petitioner, requesting to produce the Mini Lorry bearing Registration No.AP-20-W-2607 before the Court of the learned Judicial First Class Magistrate,, Jaggaiahpet in connection with Cr.No.257/2005 as arbitrary, illegal and consequently direct the respondent herein to produce the said vehicle so as to enable the petitioner to get the vehicle released in accordance with law".

I have heard the learned counsel for the petitioner as well as the learned Government Pleader for Prohibition & Excise, appearing for the respondents.

Under Section 45 of the A.P. Excise Act, 1968 (for short "the Act") whenever an offence has been committed, which is punishable under this Act, not only the intoxicant and the material in respect of which such offence has been committed, but the receptacle, package, vehicle, vessel or other conveyance used for carrying the same, are liable to confiscation. Under Section 46 of the Act, where anything liable for confiscation under Section 45 of the Act is seized or detained under the provisions of the Act, the Officer seizing and detaining such property, shall, without any unreasonable delay, produce the said seized property before the Deputy Commissioner of Prohibition and Excise, who has jurisdiction over the area. On production of the said seized property, the Deputy Commissioner of Prohibition and Excise, if satisfied that an offence under the Act has been committed, may order confiscation of such property. Of course, under Section 46-A, no order of confiscation shall be made unless the person from whom the said property is seized is given an opportunity of making representation. It is also relevant to note that under Section 46-D it is made clear that order of confiscation shall not prevent from initiation of criminal proceedings against the accused under the Act and that the result of criminal proceedings either acquittal or conviction or otherwise under the provisions of the Act, will have no bearing on the order of confiscation passed under the Act.

From the above provisions, it is clear that so far as the seized

vehicle is concerned, in case it is established that it is involved in a offence under the provisions of the Act, it is always open to the Deputy Commissioner of Prohibition and Excise to order confiscation of the same. Sub-section (1) of Section 46 also makes it very clear that as soon as the vehicle is seized, the same shall be produced without any unreasonable delay before the Deputy Commissioner of Prohibition and Excise, who has jurisdiction over the area.

In the circumstances, pending enquiry under Section 46 of the Act, if the petitioner seeks interim custody of the same, it is for him to make appropriate application before the Deputy Commissioner of Prohibition and Excise. In case Deputy Commissioner of Prohibition and Excise is satisfied that in the particular facts and circumstances of the case the interim custody can be granted to the owner of the vehicle, appropriate orders can be passed.

For the aforesaid reasons, the relief sought by the petitioner in his representation dated 12.6.2006 appears to be misconceived and not in accordance with the provisions of the Act. Hence, the writ of *mandamus*, as prayed for, cannot be granted. However, the petitioner is granted liberty to move appropriate application before the Deputy Commissioner of Prohibition and Excise seeking interim custody of the vehicle, pending confiscation proceedings. If any such application is made, the same shall be considered and appropriate orders be passed in accordance with law. No costs.

(G. ROHINI, J.)

28th August, 2006.
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17847 OF 2006

28th August, 2006.

Between:

Gudeda Narsimhulu. .. Petitioner.

And

The Deputy Commissioner of Prohibition and Excise,
Vijayawada and another. .. Respondents.